IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9734 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATNAKUMARBHA VIKRAMSINHJI CHUDASAMA

Versus

B RANA

Appearance:

MR BB NAIK for Petitioner

MR GN SHAH for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/09/2000

ORAL JUDGEMENT

Rule. Mr GN Shah, learned counsel waives service of Rule for the respondents.

2. In this petition under Article 226 of the Constitution, the proprietor of a petrol pump at village Chorniya on National Highway No. 8-A, near Limbdi in Surendranagar District has challenged the order dated 11.9.2000 passed by the Territory Manager (Retail),

Kandla for the Bharat Petroleum Corporation Ltd.

3. By the impugned order, the sales and supplies of the petroleum products from the petitioner were suspended for 45 days with immediate effect.

4. The petitioner has been running the petrol pump in question for the last three years and the petitioner has been dispensing high speed diesel as well as petrol on retain basis. On 3.12.1999, the officers of the respondent-Corporation inspected the petitioner's petrol pump and took spot test. The spot tests of diesel as well as petrol were found satisfactory. The officers, however, also took samples in the glass bottles in three sets and one set was handed over to the petitioner and the other samples were taken by the officers for getting them tested in the Corporation's laboratory. Thereafter by letter dated 16.2.1999, the Territory Manager of the respondent Corporation called upon the petitioner to send explanation. That letter is at Annexure "C" to the petition which reads as under :-

> "We refer to the retail outlet joint inspection carried out by oil industry team members on 3.12.99.
>
> The MS sample drawn during this inspection has failed in clinical test as per the report received from Industry's Laboratory. We have viewed the matter very seriously.
>
> You are hereby advised to submit us a written explanation on the above irregularity within 7 days on receipt of this letter, failing which we will be forced to proceed into the matter as it may deem fit."

Upon receiving the aforesaid notice, the petitioner sent her letter dated 22.12.1999 (Annexure "D") requesting the Territory Manager to get the sample lying with the petitioner also tested. It was stated in the said letter that the sealed sample signed by the officers of the respondent Corporation was being sent and the result thereof may be communicated to the petitioner. Again on 24.12.1999, the petitioner submitted her reply pointing out that as per the density test and paper test, the petrol was found to be in order. It is further submitted that earlier also on 19.10.1999 when the quantity was received, the petitioner had reported that the colour was light and the colour did not match. The petitioner had also talked to the officers of the

respondent Corporation at Sabarmati Depot and at Kandla and the petitioner was informed by the officers at Sabarmati Deport that if the sample meets with the density test and paper test, the tanker could be unloaded. The petitioner also requested for copies of the analysis reports and requested that the petitioner's sample may be tested in presence of the petitioner. Thereafter by the impugned order dated 11.9.2000, the Territory manager suspended the sales and supplies to the petitioner's pump for a period of 45 days with immediate effect as stated above. Hence, the petitioner has filed the present petition for challenging the said order.

5. In response to the notice, affidavit in reply is filed by the Deputy Marketing Manager of the respondent Corporation stating that earlier also when the inspection was carried out on 29.10.1998, variation in stock beyond permissible limits of Control Order was found and this was the breach of the dealership agreement apart from being violation of the Control Order, 1990, the respondent Corporation was entitled to terminate the agreement. However, a lenient view was taken and instead of terminating the agreement, the supply was suspended for 15 days and fine of Rs.2000/- was imposed. It is further stated that on 3.12.1999 a joint inspection was carried out by the officers of the respondent Corporation alongwith the officers of other oil Companies. The samples were collected and tested in the approved laboratory of the Indian Oil Corporation Ltd., Kandla and that the sample was found to fail meaning that the product was adulterated. The reply affidavit further states that the petitioner's reply to the show cause notice was raising irrelevant points and unreasonable demands such as retest.

It is further submitted that in view of various decisions of the Apex Court and this Court, this Court would not interfere in a contractual matter.

6. At the hearing of this petition, the learned counsel for the petitioner has submitted that there was a gross breach of the principles of natural justice as when respondent No. 1 sent the notice dated 16.12.1999, copy of test reports were not sent to the petitioner and that, therefore, the petitioner had made a specific grievance in her reply dated 24.12.1999 that the test reports were not supplied and that the same have been produced only alongwith the affidavit dated 23.9.2000 filed pursuant to the direction of this Court to disclose the material on the basis of which the impugned decision has been taken.

It is further submitted that the petrol in question was taken delivery of by the petitioner on 19.10.1999 and at that time the petitioner had complained before the Sabarmati Depot and the officers at Kandla that the colour of the petrol was very light and did not match. However, the employees at Sabarmati Depot informed the petitioner that if the petrol taken by the petitioner met with the requirement of density test and paper test, the tanker could be unloaded. Hence, the petitioner had unloaded the petrol and it was that petrol which was being sold when the joint inspection was carried out on 3.12.1999.

It is next contended that after receiving the show cause notice dt. 16.12.99, on 22.12.1999 the petitioner had forwarded the sample collected by the officers of the joint inspection team on 3.12.1999 which sample was handed over to the petitioner at the time of inspection. When the sample was sent, it was sealed and signed as specifically mentioned in the letter dated 22.12.1999 but for a period of 9 months, no grievance was made by the respondents that the seal was broken. It is only in the reply affidavit filed now that it is contended on behalf of the respondents that the seal was broken.

Lastly, it is contended that the petitioner had not done anything wrong much less for any oblique motive. It is submitted that the petrol pump is on the highway and the bulk quantity of the petroleum products being sold from the said petrol pump is high speed diesel being purchased by trucks and other vehicles and that if the petitioner had any intention to adulterate, high speed diesel would not fail to meet the test. However, diesel as well as the petrol samples were taken from the petitioner's petrol pump and nothing was found wrong with the diesel sample.

7. On the other hand, the learned counsel for the respondents submits that as per the analysis reports, the petrol sample failed and that, therefore, it could be safely concluded that there was adulteration. It is further submitted that earlier the petitioner was found to have committed irregularity for which a lenient view was taken and, therefore, on the second occasion suspension for 45 days cannot be said to be illegal or even arbitrary or harsh.

8. Having heard the learned counsel for the parties and also in view of the fact that the samples taken by the joint inspection team did not fail in density test

and paper test and the analysis reports also do not show that the petrol was adulterated with kerosene, solvent or any such material which is normally used in adulteration, it appears to the Court that both on the ground that the respondent Corporation did not send copies of the sample analysis reports to the petitioner alongwith the show cause notice dated 16.12.1999 or very soon thereafter even after the petitioner made a request for the same on 24.12.1999 and also in view of the fact that the sample taken by the joint inspection team on 3.12.199 and handed over to the petitioner on that very day was sent by the petitioner for testing on 22.12.1999 after receiving the notice dated 16.12.1999, the respondents ought to have got the sample tested or if the seal was broken, they ought to have informed the petitioner immediately that the seal was broken.

It is, therefore, clear that there was clear breach of the principles of natural justice.

9. The question is whether the respondents may be permitted to have another round of hearing after the impugned order is set aside.

In this connection, the following analysis report is required to be noted :-

Property	Method	Limits	Results
	IS 1448		
Appearance	-	Clear & Bright	
Colour (Visual)	-	Orange	Orange
Density at 15o C	P-16	Report	735.0
Distillation a)I.B.P	P-18	Report	47.0
REC Upto 70 Oc% by vol	P-18	10-45	53
REC upto 100 Oc% by vol	P-18	40-70	82
REC upto 180 Oc% by vol	P-18	90	97
Final Boiling point Oc max	P-18	215	183
Resdue % Vol max	P-18	2	1.0
REO gm/m3 (unwashed)	P-29	-	68
Existing Gum (solvent washed)	P-29	40 Max	11

Remarks : Sample fails in distillation W.R. to % vol. REC at 70 Oc & 100 Oc.

From the perusal of the aforesaid report, it appears that while the sample failed with respect to two parameters, it did not fail at the final boiling point

test. Even the deviation from the standard norms does not appear to be very substantial. Hence, in the facts and circumstances of the case and particularly in view of the fact that the petitioner had contended in her reply dated 24.12.1999 that the petitioner had made the complaint about the petrol even at the time of taking delivery on 19.10.1999 and considering the lapse of time, it would be unfair to the petitioner to explain the deviation from the norms after 9 months which delay is solely attributable to the respondents because the petitioner had already demanded copies of the reports earlier on 24.12.1999, but the same were not supplied to the petitioner. So also the petitioner was not informed in December, 1999 or even till passing of the impugned order on 11th September, 2000 that the seals of the sample, handed over by the joint inspection team to the petitioner and handed over by the petitioner to the respondents on 22.12.1999 after receiving the notice dated 3.12.1999, were broken.

10. It is also contended by Mr Naik that earlier in 1998 also when the respondents had taken action against the petitioner, there was no allegation of adulteration and that the said action was taken on the ground that there was stock variation about permissible limit and it was found that the delivery unit was giving erratic delivery.

11. In view of the above discussion, the petition is allowed. The impugned order dated 11.9.2000 is quashed and set aside.

Rule is made absolute. There shall be no order as to costs.

12. At this stage, the learned counsel for the respondents prays for stay of operation of this order in order to enable the respondents to have further recourse in accordance with law.

In the facts and circumstances of the case, the operation of this order is stayed till 5.10.2000.

September 25, 2000 (M.S. Shah, J.)
sundar/-